

## **Chapter 1.28**

### **REASONABLE ACCOMMODATION**

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#### **1.28.010 Purpose.**

This chapter provides a procedure to request reasonable accommodation for persons with disabilities or handicaps seeking equal access to housing under the Rehabilitation Act, the Americans With Disabilities Act, the Federal Fair Housing Amendments Act and the Nebraska Fair Housing Act (the Acts) in the application of the City of Lincoln's building codes, fire or safety codes, zoning laws, and other land use regulations, policies and procedures. (Ord. 18536 §1; May 9, 2005).

#### **1.28.020 Applicability.**

A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City's Bureau of Fire Prevention's application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section 1.28.030. (Ord. 18607 §1; August 29, 2005; prior Ord. 18536 §2; May 9, 2005).

#### **1.28.030 Application Requirements.**

(a) Application. Requests for reasonable accommodation shall be submitted on an application form provided by the City Clerk, or in the form of a letter to the City Clerk, and shall contain the following information:

- (1) The applicant's name, address and telephone number.

(2) The street address and legal description or Assessor's Parcel Number of the property for which the request is being made.

(3) The current actual use of the property.

(4) The law, provision, regulation or policy from which reasonable accommodation is being requested.

(b) Additional Information. The following information shall be submitted with the application:

(1) A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts.

(2) A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.

(3) Documentation supporting the financial, therapeutic, or other necessity for the accommodation.

Upon the filing of the application, together with all information required above, the City Council shall refer a request for reasonable accommodation from a zoning law or other land use regulation policy or practice to the Planning Commission. If the request is for reasonable accommodation from a building code, fire code, or safety code, the City Council shall refer the request to the Board of Appeals established under said code to hear appeals of orders, decisions, determinations, made by the code official relative to the application or interpretation of such code. The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the Reviewing Authority. (Ord. 18607 §2; August 29, 2005; prior Ord. 18536 §3; May 9, 2005).

#### **1.28.040 Reviewing Authority and Procedure.**

The Reviewing Authority shall hold a public hearing on the request and make a recommendation and report to the City Council within 45 days from the date of referral regarding granting, granting with modifications, or denying the request for reasonable accommodation in accordance with Section 1.28.050. Failure of the Reviewing Authority to submit its report and recommendation to the City Council within said 45 days shall be deemed to be a recommendation of approval, unless the delay is at the request of or due to the default of the applicant. (Ord. 18607 §3; August 29, 2005; prior Ord. 18536 §4; May 9, 2005).

#### **1.28.050 Decision.**

Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing Authority to timely submit its report, the City Council after public hearing shall take final action upon the application and may grant, grant with modifications, or deny the request for reasonable accommodation consistent with the Acts and based upon the following findings:

(1) Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.

(2) Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

(3) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.

(4) Whether alternative accommodations would be suitable based on the circumstances of this particular case.

(5) If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

(6) Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

(7) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

(8) Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would be consistent with the Acts and the findings required above. (Ord. 18607 §4; August 29, 2005; prior Ord. 18536 §5; May 9, 2005).

#### **1.28.060 Notice of Request for Reasonable Accommodation.**

For public hearings required to be held by the Reviewing Authority and the City Council, notice shall be given as provided in Lincoln Municipal Code Section 27.81.050, subsections (a), (b), and (c); provided that no recommendation of the Reviewing Authority or decision of the City Council shall be void or invalidated or effected in any way, for any irregularity, defect, error, or failure on the part of the City Clerk to cause notice to be given as required in Section 27.81.050(c).

It shall not be necessary to give further notice of adjourned or continued public hearings. (Ord. 18536 §6; May 9, 2005).